Filed 9/28/09 In re I.M. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. I.M., Defendant and Appellant.	E046899 (Super.Ct.No. J221966) OPINION

APPEAL from the Superior Court of San Bernardino County. Marsha Slough, Judge. Affirmed as modified.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez, and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

On May 15, 2008, the Los Angeles County District Attorney filed a Welfare and Institutions Code section 602 petition alleging that defendant and appellant, I.M. (minor), unlawfully took or drove a vehicle under Vehicle Code section 10851, subdivision (a) (count 1); and failed to stop after being involved in a traffic collision resulting in damage under Vehicle Code section 20002, subdivision (a) (counts 2 & 3).[1]

Following a contested adjudication hearing, the juvenile court made true findings on all three counts. The court also found that minor's county of residence was San Bernardino and ordered the matter transferred there for disposition.

On July 1, 2008, the San Bernardino Juvenile Court declared minor a ward of the court, placed her on probation with multiple terms, and ordered her housed in juvenile hall while awaiting placement in a suitable facility.

On appeal, minor contends that (1) there is insufficient evidence to support one of minor's convictions under section 20002, subdivision (a); and (2) one of the probation condition terms is unconstitutionally vague and overbroad. The People concede that the probation condition term must be modified. For the reasons set forth below, we agree with the People and modify probation condition term No. 11. As modified, we affirm the judgment.

[1] All statutory references are to the Vehicle Code unless otherwise specified.

I

FACTUAL AND PROCEDURAL HISTORY

On May 13, 2008, Serge Soussan was driving his car through an intersection when his vehicle was struck from behind by a Toyota Camry driven by minor, damaging Soussan's car. Minor's passenger, S.C., was in the front seat of the Camry. After striking Soussan's car, minor and S.C. drove away in the Camry; minor drove on the wrong side of the street, drove down the middle of the street, and passed other cars on the left through downtown Los Angeles. Soussan followed the Camry, and at one point, he observed minor almost hit a pedestrian pushing a baby in a stroller.

After travelling a few blocks, minor suddenly stopped the Camry, leaving about eight feet of skid marks on the pavement. Both minor and S.C. jumped out of the car, but the engine was still running and the car kept moving. The Camry rolled about 10 feet; it stopped when it hit a parked Nissan Maxima, causing damage to the Maxima. The Camry's engine continued to run for about 45 minutes; the car could not be turned off because there was no key in the ignition. Minor and S.C. ran around the block, returned to where they jumped out of the Camry, and then continued to run.

Soussan attempted to follow minor and S.C. as they ran away, but they disappeared out of sight. Soussan asked a passerby if they had seen the girls; the passerby pointed Soussan to a flower shop the girls had entered. Soussan approached the girls and attempted to perform a citizen's arrest. He was unable to secure the girls and

the girls ran down the street. An off-duty police officer apprehended the girls and held them until uniformed officers arrived and arrested them.

Susana Sandoval and Jahmel Lee owned the Camry driven by minor. They did not know minor or S.C., and had not given permission to either girl to drive the Camry.

II

ANALYSIS

A. Substantial Evidence Supports the Court's True Findings

Minor contends that the true finding for count 3, failing to stop after being involved in a traffic collision resulting in property damage, under section 20002, subdivision (a), must be reversed because the evidence was insufficient to show that minor had knowledge of the collision between the Camry and the Maxima. We disagree.

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]'" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088.) "In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) "'"If the circumstances reasonably justify the trier of fact's findings, the opinion of the

reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]"'" (*Id*. at p. 1054.)

Section 20002, subdivision (a) requires a driver of any vehicle involved in an accident resulting in damage to any property, to immediately stop the vehicle, and among other things, exchange identifying information, or leave a note containing contact information. This requirement also applies to any person who parks a vehicle which becomes a runaway vehicle, and is involved in an accident resulting in damage to any property. (§ 20002, subd. (a).)

In this case, minor argues that she was unaware that the Camry hit the Maxima and damaged it; therefore, she did not have a duty under section 20002, subdivision (a). Minor's argument is without merit. The evidence showed that while minor was eluding Soussan, minor suddenly stopped the Camry, leaving about eight feet of skid marks on the pavement, and jumped out of the car. Minor left the Camry's engine running. Hence, the Camry went about 10 feet into a parked Maxima, damaging the Maxima. After jumping out of the Camry, minor and S.C. ran a complete circle around the block, returning to where they jumped out of the Camry, and then continued to run away until they were apprehended. From this evidence, a reasonable inference can be made that upon circling the block, and running right by the location where minor initially jumped out of the Camry, minor saw that the Camry had crashed into the Maxima. Thereby, the duties outlined in section 20002, subdivision (a) were triggered.

Although minor acknowledges that "Soussan testified that [minor] and S.C. ran around the whole block," minor contends that "[t]his statement was much too vague to support a conclusion that [minor] was aware of [t]he collision between the Camry and the Maxima." However, under the sufficiency of evidence standard of review, "'[i]f the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citations.]' [Citation.]" (*People v. Thomas* (1992) 2 Cal.4th 489, 514.) Reversal is warranted only where it clearly appears that "upon no hypothesis whatever is there sufficient substantial evidence" to support the conviction. (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) Here, there is substantial evidence, even as acknowledged by minor, to support the trial court's finding that minor violated section 20002, subdivision (a), as to the collision between the Camry and the Maxima.

B. Probation Condition Term No. 11 Should Be Modified

Minor contends that probation condition term No. 11, which requires that minor "[n]ot associate or communicate with co-participant(s), [S.C.], or anyone not specifically approved by the probation officer[,]" is unconstitutionally vague and overbroad. The People agree that the probation condition must contain a knowledge requirement. We agree.

Trial courts have broad discretion to set conditions of probation in order "to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1."

(*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; see also Pen. Code, § 1203.1, subd. (j).) "If it serves these dual purposes, a probation condition may impinge upon a constitutional right otherwise enjoyed by the probationer, who is 'not entitled to the same degree of constitutional protection as other citizens.' [Citation.]" (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624 (*Lopez*).) However, that discretion is not boundless. (*People v. Garcia* (1993) 19 Cal.App.4th 97, 101 (*Garcia*).) "[C]onditions of probation that impinge on constitutional rights must be tailored carefully and 'reasonably related to the compelling state interest in reformation and rehabilitation . . . .' [Citation.]" (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 879.)

"[T]he void for vagueness doctrine applies to conditions of probation." (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 324.) A vagueness challenge is based on the due process concept of fair warning. (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) Therefore, a probation condition "'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.'" (*Ibid*.) Similarly, "[a] probation condition is constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition." (*People v. Harrisson* (2005) 134 Cal.App.4th 637, 641, citing *In re White* (1979) 97 Cal.App.3d 141, 146 ["'The Constitution, the statute, all case law, demand and authorize only "reasonable" conditions, not just conditions "reasonably related" to the crime committed.' [Citation.] [¶] Careful scrutiny of an unusual and severe probation condition is appropriate."].) Hence, probation conditions are overbroad

if they prohibit the defendant from associating with persons other than those targeted by the restriction. (*Lopez, supra*, 66 Cal.App.4th at pp. 628-629 [probation condition must contain element of knowledge of gang membership].)

In 2007, the California Supreme Court determined that a probation condition requiring that the juvenile defendant "not associate with anyone 'disapproved of by probation'" was unconstitutionally vague and overbroad "in the absence of an express requirement of knowledge . . . ." (*In re Sheena K., supra*, 40 Cal.4th at pp. 890-891.) This was because the condition itself did not notify the defendant in advance with whom she was prohibited from associating, nor did it require that the probation officer communicate such information to her. (*Id*. at pp. 891-892.) Thus, the probation condition gave the probation officer the power virtually to preclude the defendant's association with anyone (*id*. at p. 890), which could theoretically include grocery clerks, mail carriers, and health care providers. The Supreme Court reasoned that "the underpinning of a vagueness challenge is the due process concept of 'fair warning.'" (*Ibid*.) "The vagueness doctrine bars enforcement of '"a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." [Citation.]' [Citation.]" (*Ibid*.) Modification of the probation condition to require that defendant have knowledge of who was disapproved of by her probation officer cured the infringement of the defendant's constitutional rights. (*Id*. at p. 892.)

In *Garcia*, the court held that a probationary term requiring the defendant not associate with users and sellers of narcotics, felons, or ex-felons was constitutionally overbroad in failing to recognize that the defendant may, inadvertently, socialize with individuals unknown to him to fall within such categories. (*Garcia*, *supra*, 19 Cal.App.4th at p. 102.) Likewise, the court found an implicit recognition of the knowledge requirement within the condition incompatible with constitutional goals: "the rule that probation conditions that implicate constitutional rights must be narrowly drawn, and the importance of constitutional rights, lead us to the conclusion that this factor should not be left to implication." (*Ibid*.) Hence, it explicitly modified the defendant's condition to prohibit him from associating with persons he knew to be users or sellers of narcotics, felons, or ex-felons. (*Id*. at p. 103.)

In *Lopez*, the defendant's probationary term No. 15 barred him from any gang association, involvement in gang activities, display of any gang markings, or wearing of gang clothing. (*Lopez*, *supra*, 66 Cal.App.4th at p. 622.) That court found the term constitutionally vague and overbroad in that it failed to put the defendant on proper notice with whom he was prohibited from associating, what he could wear, and what activities in which he might lawfully engage. (*Id*. at pp. 628-631.) That court found an implied requirement of knowledge on the part of the defendant insufficient to overcome the constitutional infirmities: "Without at least the insertion in this aspect of the condition of a knowledge element, [the defendant] was subject to being charged with an unwitting violation of the condition because nothing in it required the police or the probation office

to apprise [the defendant] of the 'identified' items of gang dress before he was charged with a violation." (*Id*. at p. 634.) Hence, the court modified the defendant's conditions of probation to require that the defendant not associate with anyone known by him to be a gang member and not wear clothing known by him to be gang attire. (*Id*. at p. 638.) With these minor modifications, the court found the defendant's probationary terms passed constitutional muster. (*Ibid*.)

The obvious jurisprudential trend is toward requiring that a term or condition of probation *explicitly* require *knowledge* on the part of the probationer that he or she is in violation of the term in order for it to withstand a challenge for constitutional vagueness. Even the People acknowledge that the probationary condition should be modified to include a specific knowledge requirement. Therefore, we shall order that minor's probation condition term No. 11 be so modified.

III

DISPOSITION

Probation condition term No. 11 is modified to read as follows: "Not associate with co-participant(s), [S.C.], or anyone known to be disapproved of by the probation officer or other person having authority over the minor." As modified, the judgment is affirmed.

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/s/ McKinster
Acting P.J.

We concur:

/s/ Richli
J.

/s/ King
J.